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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,911	02/25/2004	Michael J. Sheehan	SHEEHAN I	4404
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EXAMINER				
HAILU, KIBROM T				
ART UNIT		PAPER NUMBER		
2616				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/786,911

Applicant(s)

SHEEHAN, MICHAEL J.

Examiner

KIBROM T. HAILU

Art Unit

2616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03/24/2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 9-12 and 17-20 is/are rejected.
- 7) ☒ Claim(s) 3-8 and 13-16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
3. Claims 1-2, 9-10, 11-12, and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bahl (US 6,782,398 B1) in view of Cordova (7,162,538 B1).

Regarding claim 1 and 11, Bahl discloses a method and communication network that provides to transfer data between nodes of the communication network, the communication network comprising a first node that includes first self-replicating code, and also comprises at least a second node and a third node that do not initially include software used in a data transfer (Abstract), the method comprising the steps of: executing the first self-replicating code in the first node to establish a communication channel with the second node, to replicate the first self-replicating code to generate second self-replicating code, and provide the second self-replicating code to the second node over the communication channel (Figs. 2-8, 10, 13, 15-17; col. 4, lines

59-63, 37-45; col. 5, lines 3-12); executing the second self-replicating code in the second node to establish the communication channel with the third node, to replicate the second self-replicating code to generate third self-replicating code, and to provide the third self-replicating code to the third node over the communication channel (col. 4, lines 63-67, 45-53; col. 5, lines 12-15, 3-12); receiving streaming data for the data transfer in the second node from the first node over the communication channel and executing the second self-replicating code in the second node to handle the streaming data (col. 5, lines 24-34; col. 4, lines 53-55; col. 1, lines 39-40; col. 9, lines 25-29); and receiving the data in the third node from the second node over the communication channel and executing the third code in the third node to handle the data (col. 5, lines 34-38; col. 4, lines 53-55; col. 1, lines 39-40; col. 9, lines 25-29). However, Bahl doesn't explicitly disclose the code/message/database comprising software used in the data transfer.

Cordova teaches comprising software used in the data transfer (col. 3, lines 21-30).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use software in the data transfer as taught by Cordova into the network of Bahl in order to reduce the time and resources devoted to distributing the software to a number of nodes or clients, and increase the speed of distributing the software.

Regarding claim 2 and 12, Bahl discloses the steps of: executing the second self-replicating code in the second node to establish the communication channel with a fourth node, to replicate the second self-replicating code to generate fourth self-replicating code, and provide the fourth code to the fourth node over the communication channel (Figs. 5-7, 10, 13, 15-17; col. 4, lines 63-67; col. 5, lines 15-18); and receiving the streaming data in the fourth node from the second node over the communication channel and executing the fourth self-replicating code in

the fourth node to handle the streaming data (col. 5, lines 24-34; col. 4, lines 53-55; col. 1, lines 39-40; col. 9, lines 25-29).

However, Bahl doesn't explicitly disclose the code/message/database comprising software used in the data transfer.

Cordova teaches comprising software used in the data transfer (col. 3, lines 21-30).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use software in the data transfer as taught by Cordova into the network of Bahl in order to reduce the time and resources devoted to distributing the software to a number of nodes or clients, and increase the speed of distributing the software.

Regarding claim 17, Bahl discloses receiving control information in the second node from the first node over the communication channel and using the control information in the second node to handle the data (col. 4, lines 63-67; col. 5, lines 12-15; col. 5, lines 24-28, 36-38. Note also that the command can be thought of the control information because it carries replication and execution information or parameters, see col. 6, lines 45-63; col. 8, lines 19-32).

Regarding claim 18, Bahl discloses routing the data and the control information from the second node to the third node over the communication channel (col. 4, lines 63-67; col. 5, lines 12-15, 3-12).

Regarding claim 9 and 19, Bahl discloses the first self-replicating code comprises a streaming worm (col. 1, lines 42-43; col. 4, lines 40-44, illustrate each of the computers receives replicating command or message. The word "worm" or "sworm" is well known for explaining a virus code that replicates itself from computer to computer. Similarly, the command or message

replicates itself from device to device, thus the replicating command still can be taught as the worm).

Regarding claim 10 and 20, Bahl discloses the second node is remote from the first node and the third node is remote from the second node (col. 3, lines 28-30, 54-60).

Allowable Subject Matter

4. Claims 3-8 and 13-16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kibrom T. Hailu whose telephone number is (571)270-1209. The examiner can normally be reached on Monday-Thursday 8:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Q. Ngo can be reached on (571)272-3139. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kibrom T Hailu/
Examiner, Art Unit 2616

/Ricky Ngo/
Supervisory Patent Examiner, Art Unit 2616